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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MAX RUHLMANN and ERIC SAMBOLD,

Plaintiffs,

v.

GLENN RUDOLFSKY, individually and DBA
HOUSE OF DREAMS KAUAI and HOUSE OF
DREAMS HAWAII; KIM D. RUDOLFSKY,
AKA KIMI DAPOLITO, individually; and DBA
HOUSE OF DREAMS KAUAI and HOUSE OF
DREAMS HAWAII
Defendants.

CASE NO.: 2:14-cv-00879-RFB-NJK

**OPPOSITION TO MOTION FOR STAY
OF DISCOVERY**

COME NOW, the Plaintiffs MAX RUHLMANN and ERIC SAMBOLD, by and through
their attorney, ELIZABETH J. FOLEY, and respectfully submits the following Points and
Authorities in Opposition to Motion for Stay filed by the Defendants GLENN RUDOLFSKY, et
al.

POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

The parties all met in Las Vegas in 2012 and shook hands on a real estate investment
joint venture. The deal was firm to the point that both the Plaintiff and the Defendants
collectively invested Five Hundred Fifty Thousand Dollars (\$550,000) to obtain a very valuable
vacation property on the island of Kauai.

The Defendants have been reaping the profits from the rentals of the property without

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1 accounting to the Plaintiffs for their share of the profits for over two years.

2 Although Defendant Kim Rudolfsky is the bookkeeper of the real estate investment joint
3 venture, and has sent many reports to Plaintiff Max Ruhlmann in Las Vegas, she boldly claims to
4 be beyond the reach of the Nevada Court's jurisdiction. (See Document 27 page 7-8, paragraph
5 C.). Defendant Glenn Rudolfsky, a long time owner of Nevada real estate, is clearly subject to
6 the jurisdiction of the Courts of one of the states in which he owns property.

7 Clearly, this joint venture dispute will require Court intervention. Written discovery
8 should proceed while the Defendants' Jurisdictional and Venue Motions are considered by the
9 District Court.

10 Defendant Glenn Rudolfsky expressly approved the formation of a Nevada limited
11 liability company to hold title of property owned by the joint venture. (See Appendix to the
12 Opposition to Motion to Dismiss, Document 19-1, pages RS42 at item 2; page; RS49; RS50 at
13 items 5, 7, 8 and 9; RS51 at lines 5 and 9; RS53 at item 13; RS54 at item 14; RS65; RS66; RS67;
14 and RS68). Mr. Rudolfsky's use of his home address in Merrick, New York for the Nevada LLC
15 email approving the Nevada LLC "Ke Aloha" is contained in Plaintiffs' Appendix to the
16 Opposition to Motion to Dismiss at Document 19-1, RS66.

18 II

19 LEGAL DISCUSSION

20 The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of
21 discovery when a potentially dispositive motion is pending. *Tradebay LLC vs. eBay, Inc.*, 278
22 F.K.D. 597, 600 (D Nev. 2011). The filing of a motion challenging personal jurisdiction does not
23 mandate a stay of discovery and the Court retains discretion to require discovery to go forward.
24 *Kabo Tools Co., et al., vs. Porauto Industrial Co., LTD., et al., U.S. District Court for the*
25 *District of Nevada, 2013 U.S. Dist. LEXIS 156928 (D. Nev., Oct. 31, 2013).* *AMC Fabrication,*
26 *Inc. vs. KRD Trucking West, Inc., 2012 U.S. Dist. LEXIS 146270 (D. Nev Oct. 10, 2012).*
27 *Holiday Sys., Int'l of Nev. vs. Vivarelli, Scharwz, and Assocs., 2012 U.S. Dist. LEXIS 125542 (D.*
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1 Nev. Sept. 5, 2012).

2 The District Court may also impose limitations on discovery until the question of
3 jurisdiction is resolved. *AMC Fabrication, Inc. vs. KRD Trucking West, Inc.*, 2012 U.S. Dist.
4 *LEXIS 146270 (D. Nev. Oct. 10, 2012)*. Plaintiffs would agree to conduct written discovery only
5 until the U.S. District Court Judge rules on the Defendants' Motion to Dismiss.

6 Nevada Federal Courts have formulated three requirements which the party seeking to
7 stay discovery bears the burden of establishing. *Holiday Sys., Int'l of Nev vs. Vivarelli, Scharwz,*
8 *and Assocs.*, 2012 U.S. Dist. *LEXIS 125542 (D. Nev. Sept. 5, 2012)*. Those three requirements,
9 hereafter referred to as the Holiday factors are:

- 10 1. The pending motion is potentially dispositive;
- 11 2. The potentially dispositive motion can be decided without additional discovery; and
- 12 3. The Court has taken a "preliminary peek" at the merits of the potentially dispositive
- 13 motion to evaluate the likelihood of dismissal.
- 14

15 **A. THE PENDING MOTIONS ARE NOT DISPOSITIVE.**

16 The Defendant filed a Motion to Dismiss for Forum Non Conveniens. The Plaintiffs
17 argued with citation to *Moore Federal Practice 3d 111.03*, that the common law doctrine of
18 forum non conveniens has been limited by the enactment of the convenience transfer statute 28
19 USC 1404(a). (Document 21, Opposition, page 7). The Defendants, in their Reply, listed
20 potential witnesses who live on the island of Kauai in support of their argument that this action
21 should be transferred to the US District Court in Hawaii, located on the island of Oahu.

22 The Defendants virtually concede that the Hawaii U.S. District Court would have
23 jurisdiction to decide this Case. Thus, the Motion to Dismiss is not dispositive but rather a 28
24 USC 1404(a) convenience transfer motion. There is no good reason why written discovery
25 should not begin at once.

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1 **B. DISCOVERY SHOULD BE ALLOWED ON THE Defendants' MOTION TO**
2 **DISMISS.**

3 Factual issues are indeed raised by Defendants' Motion to Dismiss. The Rudofsky's
4 claim in their Motion to Dismiss that they did not intend to conduct business through a Nevada
5 LLC when the email correspondence indicates Mr. Rudofsky's express approval of the Nevada
6 LLC. (See Document 19-1 at RS49). Mr. Rudofsky responded by typing "Good" next to item 2
7 which reads, "Form a Nevada LLC (Ke Aloha LLC?) Good".

8 The Defendants, by arguing that the parties should litigate this case in Honolulu, rather
9 than Las Vegas, have suggested that the litigation expense for all parties be increased. The
10 Defendants' principle residence is New York. Mr. Ruhlmann's residence is in Las Vegas and
11 Mr. Sambold resides in San Diego, California. It will cost all parties considerably more money
12 to fly to Honolulu to litigate this joint venture dispute than to litigate in Nevada. Rule 1 of the
13 Federal Rules of Civil Procedure, which has its objective of ensuring a "just, speedy, and
14 inexpensive determination of every action" is to be considered in deciding whether to grant a stay
15 of discovery. *Tradebay, LLC vs. eBay, Inc.* 278 F.R.D. 597, 602-603 (D. Nev. 2011).

16 The Plaintiffs would like to propound discovery to Defendants concerning whether their
17 Motion to Dismiss violates the objectives of Rule 1 of the Federal Rules of Civil Procedure.
18 Written discovery should respectfully be allowed to begin at once.

19 The Plaintiffs should also be entitled to seek discovery of all funds generated by the
20 income producing vacation property, in which Five Hundred Fifty Thousand Dollars (\$550,000)
21 of their money was invested. Such written discovery will need to be done in whatever Court this
22 dispute is litigated.

23 **C. MERITS OF THE MOTION TO DISMISS.**

24 The Defendants purposefully directed their activities to Nevada. Defendant Glenn
25 Rudofsky, a Nevada land owner since 2000, agreed by email to establish a Nevada LLC called
26 Ke Aloha, and to serve as the Managing Member of the Nevada limited liability company.
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1 (Appendix Document 19-1 at pages RS49-RS56. Mr. Rudolfsky even provided his New York
2 home address to be filed with the Nevada Secretary of State for the Ke Aloha limited liability
3 company. (Appendix, Document 19-1 page RS66 and RS102). The Defendant Kim Rudolfsky,
4 who was designated as the bookkeeper for the Ke Aloha joint venture, sent multiple “Ke Aloha”
5 Shareholder’s Reports to Plaintiff Max Ruhlmann in Las Vegas from her residence in New York.
6 (Appendix, Document 19-1, pages RS69-RS94). Mr. Rudolfsky wrote in an email, “Kim
7 currently does all of the bookkeeping for HOD [House of Dreams] and can pay all house related
8 bills as part of our management duties.” (Document 19-1, page RS51).

9 The Defendants take Mr. Sambold’s email far out of context. The details of the
10 refinancing of the Ke Aloha joint venture properties was not determined at the time when the
11 Plaintiffs and the Defendants agreed to the formation of the joint venture. This is precisely why a
12 Note and Deed of Trust were executed to secure the Plaintiffs’ Five Hundred Fifty Thousand
13 Dollar (\$550,000) investment in the Ke Aloha joint venture. A review of the Appendix
14 Document 19-1 and the reports sent to Nevada by the bookkeeper, Defendant Kim Rudolfsky,
15 (RS70-RS73; RS81-RS93) clearly point to the conclusion that the Plaintiffs were to be equity
16 owners in the Ke Aloha property and the vacation rental business operated for the joint venture
17 property.

18 The claims at issue in this case indeed arise out of Defendants’ forum related activity, i.e.,
19 the formation of the Ke Aloha joint venture and the Defendants obtaining Five Hundred Fifty
20 Thousand Dollars (\$550,000) to purchase a valuable business property from Nevadan Max
21 Ruhlmann and his business partner Eric Sambold following a January 2012 meeting in Las
22 Vegas. The Defendants’ forum related activities are substantial and discovery will reveal just
23 how much the Defendants have profited from their use of the Plaintiffs’ Five Hundred Fifty
24 Thousand Dollars (\$550,000) joint venture investment.

25 The exercise of jurisdiction over the Rudolfskys is reasonable. Mr. Rudolfsky is an
26 owner of Nevada real property since 2000. Both Rudolfskys directed voluminous
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1 correspondence to Nevadan Max Ruhlmann to obtain the Five Hundred Fifty Thousand Dollars
 2 (\$550,000) in joint venture investment capital from Mr. Ruhlmann and Mr. Sambold. Both
 3 Defendants met in person with the Plaintiffs in Las Vegas in January 2012 to seal the deal. The
 4 exercise of personal jurisdiction over Defendants by Nevada Courts is both reasonable and
 5 constitutional.

6 **D. INVOLVEMENT OF DEFENDANT KIM RUDOLFSKY.**

7 The Rudolfskys now argue that this action should be dismissed on the grounds that
 8 Defendant Kim Rudolfsky is an indispensable party pursuant to Federal Rule of Civil Procedure
 9 19(b). This argument was not raised in the initial Motion to Dismiss and thus not briefed in the
 10 Opposition. The argument fails factually because the Nevada Court has personal jurisdiction
 11 over Kim Rudolfsky by virtue of her purposeful actions as bookkeeper for the Ke Aloha joint
 12 venture which was agreed to be operated as Nevada limited liability company.

13 The Rudolfskys ignore the fact that Mrs. Rudolfsky was designated as the “bookkeeper”
 14 of the Ke Aloha joint venture and in her business capacity as bookkeeper for the Ke Aloha joint
 15 venture, sent shareholder’s reports to Plaintiff Max Ruhlmann in Nevada. The shareholder’s
 16 report constitute an admission which is binding on all Defendants that Mr. Ruhlmann owned an
 17 equity interest in the Ke Aloha joint venture. By acting as the bookkeeper of the Ke Aloha joint
 18 venture business entity, which was to function as a Nevada limited liability company, Mrs.
 19 Rudolfsky purposely availed herself of the benefits of transacting business in Nevada. Mrs.
 20 Rudolfsky is reasonably subject to the jurisdiction of the Nevada Courts for purposes of her
 21 involvement in the Ke Aloha joint venture. Mrs. Rudolfsky further utilized the funds of the
 22 Plaintiffs’ Five Hundred Fifty Thousand Dollars (\$550,000) to acquire valuable real property and
 23 business interests which she holds in her own name and profits from to this day.

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III

CONCLUSION

The Motion for Discovery Stay should be denied. Alternatively, written discovery should be allowed to begin at once.

DATED this 30th day of September, 2014.

By: /s/ Elizabeth J. Foley
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 30th day of September, I caused the document entitled Opposition to Motion to Stay, to be served by electronically transmitting the document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing

/s/ Debbie Skillin
An Employee of Elizabeth J. Foley